

REMARKS

Claims 1-3, 5, 6, 8-20, 23, 24, 27-31, 53, and 56-58 are pending in the application. Claims 1, 13, 27, 28, and 53 are currently amended. Claims 6, 8-12, 14-20, and 29-31 are original. Claims 2, 3, 5, 23, 24, and 56-58 are previously presented. No new matter is added.

Claims 28-31 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 2, 3, and 53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Claims 1-3, 5, 6, 8-20, 23, 24, 27-31, 53 and 56-58 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 1-3, 5, 6, 8-11, 16, 17, 23, 24, 27, 53 and 58 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,649,595 to Lewin (hereinafter "Lewin"). Claims 12-15, 56 and 57 are rejected under 35 U.S.C. §103(a) as being unpatentable over Lewin. Claims 18-20 and 28-31 are rejected under 35 U.S.C. §103(a) as being unpatentable over Lewin in view of U.S. Patent No. 6,460,209 to Reeder et al. (hereinafter "Reeder"). Applicant hereby traverses the rejections of the claims and respectfully request reconsideration thereof in view of the remarks set forth below.

I. Applicant's Amendments Overcome Rejection Under §112, Second Paragraph

Applicant amends claim 1 to clarify the sections of the adjustable mattress that are moved by the "first drive unit." Similar amendments are made in claim 27. Applicant amends claim 13 to clarify the sections of the adjustable mattress that are controlled by the controller. Claims 28 and 53 are amended to correct errors related to antecedent basis and to further define the claimed subject matter. Accordingly, Applicant requests reconsideration and withdrawal of the rejections of claims 1, 13, 27, 28 and 53 under 35 U.S.C. §112, second paragraph. Since claims 2, 3, 5-6, 8-12, 14-20, 23-24, 28-31, and 56-58 depend from claims 1 and 28, respectively, and add limitations thereto, Applicant also requests reconsideration and withdrawal of the §112 rejections of these claims.

II. Applicant's Amendments Overcome Rejection Under §112, First Paragraph

Applicant amends claim 28 to delete the "flexible platform" element from the claim. Accordingly, Applicant requests withdrawal of the rejection of claim 28 under 35 U.S.C. §112, first paragraph. Since claims 29-31 depend from claim 28 and add limitations thereto, Applicant also requests withdrawal of the §112 rejection of claims 29-31.

Claims 2, 5 and 23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enable requirement. This rejection is respectfully traversed. Applicant submits that paragraphs [0007] and [0036] of the Application adequately describe how additional movable sections of the adjustable mattress relates to the first and second sections to enable one skilled in the art to make and/or use the claimed invention. For example, according to paragraph [0036], "the mattress 100 may include a number of additional moveable sections, some of which may remain stationary relative to a foundation or parallel to the ground, while others may shift in orientation, or rise or lower according to user-selected inputs." Accordingly, Applicant requests withdrawal of the §112 rejection of claims 2, 5 and 23.

III. Claim 1 and 27 Patentably Distinguish over Lewin

As stated in the MPEP §2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Independent claim 1 is directed to an adjustable mattress having a first section and a second section overlying a common rigid planar platform. Upper surfaces of the first and second sections together form at least a portion of a sleeping surface and are moveable relative to each other. The mattress includes a first mechanical driver unit that is connected between the rigid platform and at least one of the first section and the second section. The mattress further includes a flexible sheet having a first sheet member and a second sheet member that are disposed between the first mechanical drive unit and the first and second sections. The first and second sheet members are coextensive with the first and second sections, respectively. Also, the first sheet member is attached to the second sheet member by an articulated hinge and a force

provided by the first mechanical drive unit is distributed across a region of the first section by the first sheet member associated with that section. Independent claim 27 discloses similar subject matter.

Lewin does not disclose a flexible sheet member as recited in the claims. The Office Action states, on page 4 and in the annotated Figure 5 of Lewin, that the flexible sheet member is "considered as the bottom of member (20)" in Lewin. However, the flexible sheet member, as recited in the claims, include a first and second sheet member that are attached to each other by an articulated hinge. The member 20 in Lewin is merely a mattress layer and is not attached to any hinges. The hinge in Lewin connects the member 27 and rigid plate 26; neither the member 27 nor the rigid plate 26 are flexible. (See Col. 3, Lines 34-36). Therefore neither member 27 nor the rigid plate 26 can be the flexible sheet member. Thus, Lewin does not describe all the elements of claim 1 as is required by MPEP §2131 to make a proper rejection under §102.

Therefore, Applicant requests reconsideration and withdrawal of the 35 U.S.C. §102(b) rejection of independent claims 1 and 27. Claims 2, 3, 5, 6, 8-11, 16, 17, 23, 24, 53, and 58 depend on independent claims 1 and add further limitations thereto. Thus, Applicant requests reconsideration and withdrawal of the 35 U.S.C. §102(b) rejections of these claims as well.

IV. The Claims Patentably Distinguished Over the Combination of Lewin and Reeder

"To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). For the reasons discussed in Section III above, Lewin fails to teach or suggest all of the elements of claim 1. Applicant has also carefully reviewed Reeder. Reeder does not cure the deficiencies of Lewin. Therefore Lewin and Reeder, alone or in combination, do not teach or suggest all the elements of claim 1. "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Because claims 12-15, 18, 19, 20, 56 and 57 depend from, and are limited by, independent claim 1, Lewin and Reeder, alone or in combination, cannot teach or suggest all the elements of claims 12-15, 18, 19, 20, 56 and 57. Accordingly, there can be no

prima facie case of obviousness, and the §103 rejections of dependent claims 12-15, 18, 19, 20, 56 and 57 should be withdrawn.

Furthermore, Lewin and Reeder, alone or combination, do not teach each and every element of independent claim 28. In particular, as provided in Section III above, Lewin does not teach or suggest the specific subject matter of a mattress having a flexible sheet member including a first and second sheet member attached to each other by an articulated hinge as explicitly recited in independent claim 28. Reeder also does not teach or suggest this subject matter. Accordingly, there can be no prima facie case of obviousness, and the §103 rejection of claim 28 should be withdrawn. Since claims 29-31 depends from claim 28 and add limitations thereto, §103 rejections of claims 29-31 should also be withdrawn.

CONCLUSION

For at least the reasons set forth above, applicant believes the pending application is in condition for allowance.

Applicant believes that appropriate fees are provided in connection with this submission. However, if there are any other fees due in connection with the filing of this Response, please charge our Deposit Account No. 18-1945, under Order No. SMCY-P01-103 from which the undersigned is authorized to draw.

Dated: June 11, 2007

Respectfully submitted,

By 

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